IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 32797 of 2004(D)

OS.145/2002 of PRL.SUB COURT,IRINJALAKUDA

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PETITIONER:

1. SATHYAN, AGED 53, S/O.POOKKOTTU SANKARAN KUTTYM MANALOOR VILLAGE, THRISSUR TALUK.

2. USHA, W/O.SATHYAN, POOKKOOTTU, MANALOOR VILLAGE, THRISSUR TALUK.

BY ADV. SRI.SREEKUMAR G. (CHELUR)
SRI.K.JAGADEESH

RESPONDENTS:

1. PAUL, S/O.THAZHEKKADAN PORINCHU, TRIKKOOR VILLAGE DESOM, MUKUNDAPURAM TALUK.

2. JOHNY, S/O.THEKKOODAN LAZAR, KONIKKARA DESOM, MUKUNDAPURAM TALUK.

3. FRANCIS ANTONY, S/O.VALLISSERRY ANTHONY, KONIKKARA DESOM, MUKUNDAPURAM TALUK.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXTS:

EXT.P1 TRUE COPY OF THE PLAINT IN O.S.NO.145/2002 ON THE FILE OF THE SUB COURT, IRINJALAKUDA DTD. 12/4/2002.

EXT.P2 TRUE COPY OF THE I.A.NO.2249/04 IN EXT.P1 SUIT DATED 13/7/2004.

EXT.P3 TRUE COPY OF THE IA.NO.2250/04 IN EXT.P1 SUIT DATED 13/7/2004.

EXT.P4 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO EXT.P2 DATED 16/7/04.

EXT.P5 TRUE COPY OF THE ORDER PASSED IN I.A.NO.2249/04 IN O.S.NO.145/02 DATED 31/7/2004 BY THE SUB COURT, IRINJALAKUDA.

EXT.P6 TRUE COPY OF THE ORDER PASSED IN I.A.NO.2250/04 IN O.S.NO.145/02 DATED 13/8/04 BY THE SUB COURT IRINJALAKUDA.

P.R. RAMAN, J.

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W.P.(C) NO. 32797 OF 2004

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DATED THIS, THE 10TH DAY OF JULY, 2007.

J U D G M E N T

Petitioners seek to quash Exts.P5 and P6 orders passed by the Principal Sub Court, Irinjalakuda. Ext.P5 is an order dated 31.7.2004 in I.A. 2249/2004 and Ext.P6 is an order passed in I.A. 2250/2004 on 13th August, 2004. Both these applications were filed in O.S. 145 of 2002 before that court. Petitioners are the defendants 5 and 6 in the above said suit, instituted by the respondents herein as plaintiffs. In the plaint, they sought mainly two reliefs i.e. prayer (a) for a declaration that the Registered document No. 4665 and 4667/2001 of Nellayi Registry is null and void and prayer (b) is for realization of the amount shown in the plaint with interest and cost. Ext.P1 is the true copy of the plaint. Subsequently, the plaint was amended and para 3A was added. Petitioners herein were impleaded subsequently, and they filed a written statement contending among other things that they are bona fide purchasers for value and consideration. They also filed I.A. 1812/2004 to decide the issue regarding sufficiency of the court fee remitted by the plaintiff as a

preliminary point. Subsequently, the plaintiff filed I.A. 2249/2004 and I.A. 2250/2004. Exts.P2 and P3 are respectively, the copies of those applications. Ext.P2 was filed seeking to withdraw the prayer 'A' made in the suit with liberty to file a fresh suit or other applications concerning the subject matter of prayer 'A'. Ext.P3 was filed for amending the prayer in Ext.P1 suit. Objections were filed by the petitioners in both these applications. Thereafter, the court below passed Exts.P5 and P6 orders on Exts.P2 and P3. Those two orders are impugned in this revision petition.

2. By Ext.P5, the court below found that permission can be granted to withdraw the suit as contemplated under Order 23 Rule 1 as according to the court below, the present suit with prayer 'A' is in bad shape and there is likelihood of the suit being dismissed. Accordingly, the court granted the relief to withdraw the prayer 'A' with liberty to file a fresh suit. As per Ext.P6 order, the amendment of the plaint was allowed.

3. The specific contention of the petitioners is that without prayer 'A' there arises no occasion to implead the petitioners as additional defendants in the suit and hence the court below was not right in granting the relief to withdraw the prayer 'A' without imposing any condition, when respondents 5 and 6 on the face of such relief granted would still continue to be in the party array and they are unnecessary parties.

4. When the matter was came up for consideration, learned counsel appearing for the respondents herein submitted that he is not pressing I.A. 2249/2004 and to that extent appropriate relief be moulded in the writ petition. According to the learned counsel appearing for the petitioner, if prayer 'A' continues the question as to whether the amendment ought to be allowed will have to be reconsidered as there may be misjoinder of cause of action. Having considered the submissions and since the petitioner wants to withdraw I.A. No. 2249/2004 to which course, the respondent has no objection, Ext.P5 order is quashed. Ext.P6 was subsequent to ext.P5 order.

5. In such circumstances, petitioner herein will be heard in the matter and fresh orders will be passed in I.A. 2250/2004. So as to enable the court below to hear the parties and pass appropriate orders on I.A. 2250/2004, Ext.P6 is quashed.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

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